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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/597,145	06/20/2000	Tsukasa Ogino	35.C14572	5116

5514 7590 03/09/2007
FITZPATRICK CELLA HARPER & SCINTO
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NEW YORK, NY 10112

EXAMINER

BOUTAH, ALINA A

ART UNIT	PAPER NUMBER
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2143

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.		Applicant(s)	
	09/597,145		OGINO, TSUKASA	
	Examiner		Art Unit	
	Alina N. Boutah		2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) See Continuation Sheet is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims pending in the application are 17, 25-28, 30, 42-46, 76, 84-87, 89, 101-105, 135, 143-146, 148, 160-164, and 178-183.

Continuation of Disposition of Claims: Claims rejected are 17, 25-28, 30, 42-46, 76, 84-87, 89, 101-105, 135, 143-146, 148, 160-164, and 178-183.

DETAILED ACTION

Response to Amendment

This action is in response to Applicant's amendment filed May 12, 2005. Claims 1-16, 18-24, 29, 31-41, 47-75, 77-83, 88, 90-100, 106-134, 136-142, 147, 149-159, 165-177 have been cancelled. Claims 17, 25-28, 30, 42-46, 76, 84-87, 89, 101-105, 135, 143-146, 148, 160-164, and 178-183 are pending in the present application.

Claim Rejections - 35 USC § 112

Claim 44 has been amended to overcome the 112 rejection. The rejection is now withdrawn.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17, 25-28, 30, 42-46, 76, 84-87, 89, 101-105, 135, 143-146, 148, 160-164, and 178-183 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,205,477 issued to Johnson et al. (hereinafter referred to as Johnson).

Regarding claims 17, Johnson teaches a server determination apparatus, comprising:

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receiving means for receiving an inquiry from a first one of a plurality of information distribution servers (Abstract; col. 1, lines 52-55);

collection means for collection network state information between a client and each of the plurality of information distribution servers,

server determination means for determining, based on a logical distance between the client and each of the plurality of information distribution servers, which one of the plurality of information distribution servers should be accessed by the client which has accessed the first one of the plurality of the information distribution servers, in accordance with a first access from the client, and for determining, based on the network state information, collected by said collecting means between the first access and a second access from the client, which one of the plurality of information distribution servers should be accessed by the client which has accessed the first one of the plurality of the information distribution servers, in accordance with the second access from the client (figure 1; col. 4, line 61 to col. 5, line 19; col. 11, lines 6-23); and

informing means for informing the first information distribution server of the determined one of the plurality of information distribution servers that the client should access (col. 4, line 61 to col. 55, line 19).

Regarding claim 25, Johnson teaches the apparatus according to claim 17, wherein said collection means collects, as the network state information, at least one of a response time, a number of routers steps, and a packet loss ratio between said client each of the plurality of information distribution servers (abstract).

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Regarding claim 26, Johnson teaches the apparatus according to claim 17, wherein said server determination means determines the one of the plurality of information distribution servers based on the network state information and state information of each of the plurality of information distribution servers, in accordance with the second access from the client (figure 1; col. 4, line 61 to col. 5, line 19; col. 11, lines 6-23).

Regarding claim 27, Johnson teaches the apparatus according to claim 17, wherein said collection means collects at least one of a congestion degree, a number of packets, and a number of packet errors (col. 9, lines 23-36).

Regarding claim 28, Johnson teaches the apparatus according to claim 26, wherein as the network state information, said collection means collects one of a CPU load ratio, a CPU idle value, a number of connection links, and a disk load ratio each of the plurality of information distribution servers (col. 9, lines 37-40).

Claims 30, 42-46 are similar to claims 17, 25-28, respectively, therefore are rejected under the same rationale.

Claims 76 and 84-87 are similar to claims 17, 25-28, respectively, therefore are rejected under the same rationale.

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Claims 89, and 101-105 are similar to claims 17, 25-28, respectively, therefore are rejected under the same rationale.

Claims 135 and 143-146 are similar to claims 17 and 25-28, respectively, therefore are rejected under the same rationale.

Claims 148 and 160-164 are similar to claims 17 and 25-28, respectively, therefore are rejected under the same rationale.

Regarding claims 178-183, Johnson teaches each of the plurality of information distribution servers includes the first information distribution server (figure 1).

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive.

In response to Applicant's argument that the applied art fails to teach the feature of i) "determining, based on a logical distance between a client and each of a plurality of information distribution servers, which one of the plurality of information distribution servers should be accessed by the client which has accessed the first one of the plurality of the information distribution servers, in accordance with a first access from the client, and ii) determining based on (network state information between a client and each of the plurality of information distribution servers) collected between the first access and a second access from the client, which one of the plurality of information distribution servers should be accessed by the client which has

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accessed the first one of the plurality of information distribution servers in accordance with the second access from the client” the PTO respectfully submits that this is being taught by Johnson in the cited area above.

For example, col. 5, lines 39-60 of Johnson teaches utilizing one or more metrics to select one of web servers in response to a server request. The metrics include information such as distance to each server as well as availability of the servers. In this case, the distance metric is interpreted as the logical distance and the availability is interpreted as the state information as claimed. For at least this reason, the rejections are sustained.

Applicant has had numerous opportunities to amend the claimed subject matter, and has failed to modify the claim language to distinguish over the prior art of record by clarifying or substantially narrowing the claim language. Thus, Applicant apparently intends that a broad interpretation be given to the claims and the Examiner has adopted such in the present and previous Office action rejections. See *In re Prater and Wei*, 162 USPQ 541 (CCPA 1969), and MPEP 2111.

Applicant employs broad language, which includes the use of word, and phrases, which have broad meanings in the art. In addition, Applicant has not argued any narrower interpretation of the claim language, nor amended the claims significantly enough to construe a narrower meaning to the limitations. As the claims breadth allows multiple interpretations and meanings, which are broader than Applicant's disclosure, the Examiner is forced to interpret the claim limitations as broadly and as reasonably possible, in determining patentability of the disclosed invention. Although the claims are interpreted in light of the specification, limitations

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from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir.1993).

Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response, and reiterates the need for the Applicant to more clearly and distinctly, define the claimed invention.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alina N. Boutah whose telephone number is 571-272-3908. The examiner can normally be reached on Monday-Friday (9:00 am - 5:00 pm).

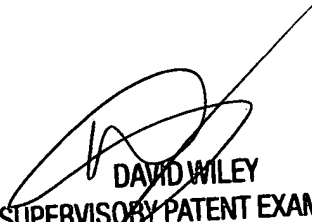
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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